Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	RM No. 8380
Joint Petition for Rulemaking	)	
on Cable Television Wiring	)	

REPLY OF GTE

GTE Service Corporation ("GTE"), on behalf of its domestic telephone operating companies and GTE Laboratories Incorporated, submits this reply to the comments of others in the above-captioned proceeding.[1] While the four cable industry commenters tend to focus on the unlikeness of cable television and telephony, and to view the proposal as a disadvantage in competing with telephone companies, the 18 proponents (21 counting petitioners) are a diverse group expressing interests far beyond those of the telephone industry.

They range from electric power (Info-Highway Coaltion, UTC) to broadcast television (INTV, EIA/CEG) to consumer and public-interest organizations and individuals (*e.g.* MAP, City of New York, Henry Geller) to asociations of equipment makers and designer/installers (TIA/UPED, BICSI), and of course include competitors other than telephone companies (Info-Highway Coalition, WCA and Liberty, INTV).

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[1] On the record as assembled by GTE, it appears that the petition is supported by the American Public Info-Highway Coalition, Ameritech, Association of Independent Television Stations, Bell Atlantic, BellSouth, Building Industry Consulting Service International, Electronic Industries Association (Consumer Electronics Group), Henry Geller, GTE, Liberty Cable Company, Mets Fans United *et al.*, New York City, NYNEX, Pacific Telesis, Southern New England Telephone Company, Telecommunications Industry Association (User Premises Equipment Division), Utilities Telecommunications Council, and Wireless Cable Association. Opposed are Cablevision Industries Corporation *et al.*,Continental Cablevision, National Cable Television Association and Time Warner Entertainment Company.

Although outnumbered, the cable industry commenters have raised specific issues that deserve airing and resolution in a rulemaking like the one requested. As GTE reads their oppositions, the questions tend to fall into categories of legality, technical feasibility and regulatory practicability.

Legality. The cable commenters claim that by choosing to deal only with post-termination disposition of cable home wire, Congress meant to preclude the Commission from adopting pre-termination rules. GTE disagrees for at least two reasons: First, it would have been entirely out of character with Title VI as a whole for Congress to have intended the limited action in Section 624(i) to occupy the entire field of cable home wire, to the exclusion of future FCC or state or local legislation on the subject. Time and again in Title VI, Congress took pains to say it was acting narrowly -- for example, with respect to "cable service," as defined -- not for the purpose of fencing out other jurisdictions, but for the opposite reason of deferring to them.[2]

Second, if Congress had meant to occupy the cable home wire field by Section 624(i), it surely would have said more than, for example, the House stated in its Report, merely that the subsection "does not address" pre-termination rights of operators, subscribers or third parties.[3] Without more, the quoted language is better read as Congress limiting its own regulatory actions, not those of other governmental bodies having independent authority over the subject.

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[2] Among the most emphatic of many examples are Sections 621(d)(1) and (2) and their associated legislative history, taking care not to oust the states from their historic oversight of certain types of non-cable service.

[3] Report 102-628, 102d Cong., 2d Sess., 118.

In any event, the legal question of whether Section 624(i) may be augmented by means of other authority is not so open-and-shut as to keep the FCC from initiating a rulemaking to address this and other issues.[4]

Technical feasibility. The cable opponents raise various technical arguments against sharing cable home wire with alternative suppliers. Two of these -- signal leakage and signal deterioration from ingress of radio interference -- were obviously on Congress' mind when it adopted the limited Section 624(i), and cannot be ignored in any effort to expand customer or third-party access to cable home wire. The alleged "physical impossibility" of wire-sharing, argued most vigorously by Time Warner, seems to depend greatly upon variable circumstances. Time Warner admits, for example, that cable operators do not always use all the channel capacity on their systems, but then falls back upon a claim of unfairness if a competitor were permitted to occupy its unused spectrum. (Comments, 11, n.24) On the other hand, the whole point of pre-termination rules would be greater fairness to the consumer, allowing him some say in who occupies the space the cable operator is not using.

Regulatory practicability. The cable industry objections here tend to recapitulate legal distinctions between cable service and telephony, and to repeat technical reasons why cable home wire can only be used by one provider at a time.[5] The ultimate question of practicability is posed by Cablevision Industries

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[4] Several of the cable opponents refer to Section 621(c) and certain legislative history, prohibiting common carrier regulation of cable operators when they offer cable service, as precluding pre-termination rules. If a cable operator does not own or control cable home wire, it is at least arguable that the wire is no longer part of the operator's system and is therefore not within the ambit of Section 621(c). Here again, the question's answer is not so obvious as to bar rulemaking.

[5] Continental also objects to further confusing the already complex question of varying state laws on ownership of interior wiring.(Comments, 7-8) GTE agrees that state laws are various, but submits that a federal rule covering the cable from the time of its installation may actually reduce the multiplicity of state outcomes.

when it asks: Since a subscriber can achieve what petitioners seek by simply terminating service, purchasing the wire as allowed, and signing up with one or more other providers, why all the fuss? (Joint Comments, 2-3)

In GTE's view, that question itself proves too much. Why should a subscriber who wants to continue with a cable operator, but perhaps add some variety with alternative offerings of the subscriber's own choosing, have to terminate the operator's service (and pay to re-start it) in order to achieve a modicum of consumer choice?

CONCLUSION

For the reasons discussed above, GTE believes that some of the questions raised by cable industry opponents to the Joint Petition for Rulemaking are deserving of serious consideration, but none of the issues in their oppositions precludes the institution of a proceeding. Nor do the cable operators' concerns, in GTE's preliminary view, outweigh the likely gains in video programming competition and diversity from the adoption of the rule sought by the Joint Petitioners.

Respectfully submitted,

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January 19, 1994

Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Reply of GTE" have been mailed by first class United States mail, postage prepaid, on the 19th day of January, 1994 to all parties on the attached list.

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